



Appeal Decision

Site visit made on 24 October 2023

by N Teasdale BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22nd November 2023

Appeal Ref: APP/A5270/W/23/3319499

Occupation Road Street Works, Occupation Road, West Ealing W13 9RR

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Article 3(1) and Schedule 2, Part 16, Class A of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO).
 - The appeal is made by Gallivan (CK Hutchison Networks (UK) Limited) against the decision of London Borough of Ealing.
 - The application Ref 230046PNT, dated 6 January 2023, was refused by notice dated 2 March 2023.
 - The development proposed is described as, '*Proposed 5G telecoms installation: H3G 16m street pole and additional equipment cabinets*'.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (GPDO 2015), under Article 3(1) and Schedule 2, Part 16, Class A, Paragraph A.3(4) require the local planning authority to assess the proposed development solely on the basis of its siting and appearance, taking into account any representations received. My determination of this appeal has been made on the same basis.
3. The provisions of Schedule 2, Part 16, Class A of the GPDO 2015 do not require regard be had to the development plan. I have had regard to the policies of the development plan and the National Planning Policy Framework (the Framework) only in so far as they are a material consideration relevant to matters of siting and appearance.

Main Issue

4. The main issue is whether the proposed development would be granted planning permission by Article 3(1) and Schedule 2, Part 16, Class A of the GPDO with regard to the siting and appearance of the proposed installation on the character and appearance of the area including whether the proposed development would preserve the setting of the Forester Public House Grade II listed building and, if any harm would occur, whether this is outweighed by the need for the installation to be sited as proposed taking into account any suitable alternatives.

Reasons

5. The appeal site is located in a highly visually prominent position on the pavement along the eastern side of Northfield Avenue which is a busy road

network and is directly adjacent a mesh fence beyond of which are allotments which is identified as a Site of Nature Conservation and designated Community Open Space. The surrounding area is primarily residential although there are some commercial/retail uses in the immediate vicinity including The Forester Public House which is located to the west and is a Grade II listed building. A linear row of mature trees line both sides of Northfield Avenue at a location close to the main road and there are a number of trees/landscaping located behind the mesh fencing which covers a large distance along this side of the road. That said, the location subject to this appeal is generally free from substantial screening of that seen elsewhere along Northfield Avenue and the allotments located behind the mesh fencing is generally open and clearly visible from public views.

6. The area provides a verdant character, a sense of openness and visual relief to the street scene which is otherwise characterised by residential and commercial/retail buildings. A number of streetlights, bus shelters and road signs are evident in the immediate vicinity of the site.
7. Although the appeal site is not within a Conservation Area and not covered by a Tree Preservation Order, the Forester Public House which is located to the west is a Grade II listed building and as such, I have a duty under Section S66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 which requires special regard to be had to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses. I have had regard to paragraph 199 of the Framework which states that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation.
8. The proposed development would be located on the pavement directly in front of the mesh fencing which as referred to above is generally free from substantial screening. It would therefore be visible from the nearby residential properties/apartments located along Seaford Road as well as the Forester Public House Grade II listed building and main roads even taking into account the separation distances that exist. The 16-metre high monopole would exceed the height of the mesh fencing and any nearby trees. This, along with its overall width which would be greater than other features in the area, would affect the sense of openness and visual relief to the street scene. This would result in the monopole being visually prominent within this otherwise open and verdant setting. It would be a dominant addition to the street scene and would cause harm to the visual amenity of the area and nearby Grade II listed building to the detriment of its setting even if painted a different colour. I appreciate that the pole and cabinets are designed to be installed alongside public roads and are often found in such urban locations. However, this does not mean that it would not be harmful.
9. Given the overall site context and that the area of land behind the mesh fencing is generally open, I am not persuaded that the proximity to lampposts and trees or other nearby buildings would help to reduce any visual impact, as it would ultimately be seen against an open backdrop and thus would not blend into the existing street scene. I appreciate the specific requirements and reasoning for the height. However, the proposed development would still be too large in this location.

10. My attention has been drawn to a previous planning appeal¹ which allowed for telecommunications installation. Whilst I do not have all of the information that would have been before the decision maker in that case, there are material differences in that appeal and the appeal before me including amongst others, location, and siting. To this end, the decision notice in the referred to appeal explains that the monopole would be viewed against existing built form of taller height which is not the case at this particular site. I therefore do not find that appeal comparable to the one I am considering.
11. Accordingly, I find that the proposed development by reason of its siting and appearance would result in harm to the character and appearance of the area and would fail to preserve the setting of the Grade II listed building causing less than substantial harm to its significance as a designated heritage asset. Paragraph 200 of the Framework explains that any harm to, or loss of, the significance of a designated heritage asset (from its alteration or destruction, or from development within its setting), should require clear and convincing justification. It goes on to explain at paragraph 202 that where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use.
12. I appreciate the public benefits associated with provision of enhanced digital communication including benefits to the wider economy, improved connectivity for businesses and communities and ensuring high quality and widespread coverage. However, such benefits would not be sufficient to offset the identified harm to the character and appearance of the area including the setting of the Forester Public House Grade II listed building which I have attached great weight as advised by the Framework.
13. Paragraph 117 of the Framework requires applications to be supported by the necessary evidence to justify the proposed development. The appellant has followed a sequential approach. It states that the cell search area is extremely constrained, covering a small radius area and that no mast/site sharing opportunities or existing buildings/structures were identified. Therefore, a street works installation was considered to be the most viable solution. A number of alternative sites were considered and subsequently discounted, but the information before me is limited with a list of discounted options and a brief and somewhat vague explanation on why other sites have been discounted. Many of these sites have been discounted primarily due to unsuitable pavements. However, some of the sites including their pavements do not appear to be substantially different to that of the appeal site. Whilst I appreciate other possible constraints, the appeal site is also located in close proximity to residential properties and a listed building which makes the appeal site a more sensitive location and thus not more preferable. Overall, I am not convinced based on the evidence in front of me that the appeal site represents the only viable option.
14. Whilst not determinative, the proposal would be contrary to Policies D4 and D8 of the London Plan (2021) and Policies 7.4 and 7B of the Ealing Development Management Development Plan Document (2013) as set out within the

¹ APP/A5840/W/20/3254830

Councils' officer's report which together, amongst other matters, requires development proposals to ensure the public realm is well-designed, safe, accessible, inclusive, attractive, well connected, related to the local and historic context and easy to understand, service and maintain. The proposed development would also be contrary with chapter 16 of the Framework which relates to conserving and enhancing the historic environment.

Other Matters

15. I appreciate that pre-application advice with the Council has been undertaken and that ward members were notified about the proposals. However, this would not alter my findings on the above main issue.
16. Concerns have been raised about potential effects on health. However, the appellant has provided a certificate to confirm that the proposal has been designed to comply with the guidelines published by the International Commission on Non-Ionizing Radiation Protection (ICNIRP). In these circumstances, the Framework advises that health safeguards are not something which a decision-maker should determine. No sufficiently authoritative evidence has been provided to indicate that the ICNIRP guidelines would not be complied with or that a departure from national policy would be justified.

Planning Balance

17. Paragraph 114 of the Framework explains that advanced, high quality and reliable communications infrastructure is essential for economic growth and social well-being. Planning policies and decisions should support the expansion of electronic communications networks, including next generation mobile technology (such as 5G) and full fibre broadband connections.
18. I have had regard to the benefits of the proposed development as set out above. However, on the basis of the evidence in front of me and my own observations on site, I have found that the proposed development would result in harm to the character and appearance of the area and would fail to preserve the setting of the Grade II listed building. There is no clear and persuasive evidence to demonstrate that the appeal site represents the only viable option. Therefore, notwithstanding the need to upgrade the network and assist the governments aspirations along with the associated benefits, the harm that would arise from the siting of the development would not be outweighed by the overall need in this location.

Conclusion

19. For the above reasons and having regard to all other relevant matters raised, I conclude that the appeal is dismissed.

N Teasdale

INSPECTOR